

PART I - THE SCHEDULE

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PART I - THE SCHEDULE

SECTION H - SPECIAL CONTRACT REQUIREMENTS

H.1 MODIFICATION AUTHORITY

Notwithstanding any of the other clauses of this contract, the Contracting Officer shall be the only individual authorized to:

- a. Accept nonconforming work,
- b. Waive any requirement of this contract, or
- c. Modify any term or condition of this contract.

H.2 TECHNICAL DIRECTION

- a. Performance of the work under this contract shall be subject to the technical direction of the DOE Contracting Officer's Representative (COR). The term "technical direction" is defined to include, without limitation:
 - 1. Directions to the Contractor which redirect the contract effort, shift work emphasis between work areas or tasks, require pursuit of certain lines of inquiry, fill in details or otherwise serve to accomplish the contractual Statement of Work.
 - 2. Provision of written information to the Contractor which assists in the interpretation of drawings, specifications, or technical portions of the work description.
 - 3. Review and, where required by the contract, approval of technical reports, drawings, specifications, and technical information to be delivered by the Contractor to the Government under the contract.
- b. Technical direction must be within the scope of work stated in the contract. The COR does not have the authority to, and may not, issue any technical direction which:

1. Constitutes an assignment of additional work outside the Statement of Work;
 2. Constitutes a change as defined in the contract clause entitled “Changes”;
 3. In any manner causes an increase or decrease in the total estimated contract cost, the fixed fee (if any), or the time required for contract performance;
 4. Changes any of the expressed terms, conditions or specifications of the contract;
or
 5. Interferes with the Contractor’s right to perform the terms and conditions of the contract.
- c. All technical direction shall be issued in writing by the COR.
- d. The Contractor shall proceed promptly with the performance of technical direction duly issued by the COR in the manner prescribed by this clause and with the COR’s authority under the provisions of this clause. If, in the opinion of the Contractor, any instruction or direction by the COR falls within one of the categories defined in b.1. through b.5. above, the Contractor shall not proceed but shall notify the Contracting Officer in writing within five (5) working days after receipt of such instruction or direction and shall request the Contracting Officer to modify the contract accordingly. Upon receiving the notification from the Contractor, the Contracting Officer shall:
1. Advise the Contractor in writing within thirty (30) days after receipt of the Contractor’s letter that the technical direction is within the scope of the contract effort and does not constitute a change under the “Changes” clause of the contract;
 2. Advise the Contractor in writing within thirty (30) days after receipt of the Contractor’s letter not to perform under the direction and to cancel the direction;
or
 3. Advise the Contractor in writing within a reasonable time that the Government will issue a written change order.
- e. A failure of the Contractor and Contracting Officer to agree that the technical direction is within the scope of the contract, or a failure to agree upon the contract action to be taken with respect thereto shall be subject to the provisions of the clause entitled “Disputes” in Section I.

H.3 KEY PERSONNEL

A Key Personnel List, incorporating the Key Personnel proposed, shall be provided to the Contracting Officer for DOE approval within 30 days of contract award. These Key Personnel are considered to be essential to the work being performed on this contract. Prior to diverting to other positions or substituting any of the specified Key individuals, or proposing them as a Key person under another contract, the Contractor shall notify the Contracting Officer in writing at least thirty (30) days in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the program. No diversion or substitution shall be made by the Contractor without the written consent of the Contracting Officer, provided that the Contracting Officer may ratify in writing such diversion or substitution and such ratification shall constitute the consent of the Contracting Officer required by this clause. Unless approved in writing by the Contracting Officer, no Key Personnel position will remain unfilled by a permanent replacement for more than four (4) months. The Key Personnel List shall be amended during the course of the contract to add or delete Key Personnel as appropriate.

Anytime the overall Site Project Manager is replaced for any reason within two (2) years of contract award, earned fee will be reduced by \$100,000.00. In addition, each time any other Key person identified on the Key Personnel List is replaced for any reason within two (2) years of contract award, earned fee will be reduced by \$50,000.00. The combined total maximum reduction to earned fee for such replacements shall be \$500,000.00.

The Contractor may request, in writing, that the Contracting Officer waive all or part of a reduction, if special circumstances exist. The Contracting Officer shall have unilateral discretion to waive or not to waive all or part of a reduction.

H.4 RESPONSIBLE CORPORATE OFFICIAL

The Contractor shall guarantee performance as evidenced by the Guarantee of Performance (Clause H.5). If a separate business entity is established for this contract, the Contractor's parent company shall guarantee performance as evidenced by the Guarantee of Performance (Clause H.5). If the Contractor is a joint venture or other similar entity where more than one company is involved, the parent companies shall assume joint and severable liability for the performance of the Contractor. In the event any of the signatories to the Guarantee of Performance enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the Contracting Officer. Notwithstanding the provisions of this clause, the Government may contact, as necessary, the single responsible corporate official identified below, who is at a level above the Contractor and who is accountable for the performance of the Contractor, regarding Contractor performance issues. Should the responsible corporate official change during the period of the contract,

the Contractor shall promptly notify the Contracting Officer in writing of the change in the individual to contact.

Name:

Position:

Company/Organization:

Address:

Phone:

Facsimile:

E-mail:

H.5 GUARANTEE OF PERFORMANCE AGREEMENT

The Contractor or the Contractor's parent organization(s) has (have) provided a Guarantee of Performance Agreement in a manner and form acceptable to the Contracting Officer assuring the performance, duties, and responsibilities including repayment of unearned provisional fee, will be satisfactorily fulfilled. The Guarantee of Performance Agreement dated TBD is incorporated herein by reference and made part of this contract.

H.6 SMALL BUSINESS SUBCONTRACTING PLAN

The Contractor's Small Business Subcontracting Plan and Small Disadvantaged Business Participation Program (SDBP), as approved by the Contracting Officer, are hereby incorporated into Section J, Attachment 8 of this contract. Future revisions to the Plan/Program shall be accomplished by contract modification. See contract clauses I.82 and I.91 regarding incentives to be paid for exceeding goals/targets.

Performance against the above Plan/Program will be considered in the past performance evaluation conducted yearly by the Contracting Officer.

H.7 SELF PERFORMANCE

- a. The Contractor has overall contractual responsibility for accomplishing the Statement of Work as discussed in Section C. The Contractor shall procure and manage construction subcontractors for those activities determined to be construction work at the FEMP, including construction related to remedial and other response actions selected in ROD's (or other decision document(s)). The Contractor shall integrate construction work with other activities at the FEMP. To the maximum extent practicable, subcontracts shall be fixed price.
- b. The Contractor shall procure and manage Architect/Engineering subcontracts for remedial and other design services at the FEMP, as necessary.
- c. Prior to using the Analytical Services of any laboratories owned by or affiliated with the Contractor, the Contractor shall submit a Laboratory Utilization Plan which describes the type and amount of analytical services required to support the work each year. The Plan shall include projections for the use of any Contractor-affiliated laboratories, including the type of analytical services, the cost of those services, and the availability (or capacity) of qualified laboratories providing similar services that are not affiliated with the Contractor. The Plan shall also project the use of analytical services by all laboratories for the work under this contract, including any Contractor-affiliated laboratories. This plan shall be updated annually and approved by the Contracting Officer.
- d. The Contractor shall develop and submit a Make-or-Buy Plan covering any new planned work activities, supplies, services, construction, and architect-engineer efforts anticipated to exceed \$3 million to the Contracting Officer for approval within 180 days of award of this contract. This plan must describe the proposed work, identify the associated Work Breakdown Structure element, and categorize the items as "must make", "must buy", or "can make or buy", with the reasons for such characterizations in consideration of program specific make-or-buy criteria issued by the Contracting Officer, DOE-OH Procedure No. DOE-OH-G-540-28 entitled "Approval of Outsourcing, Make or Buy and Privatization Proposals", dated May 4, 1999, and least cost considerations. A cost-benefit analysis shall be performed on any item identified as "must make" or "can make or buy" and submitted with the plan for Contracting Officer approval. The Contractor shall perform in accordance with the plan once it is approved. Any changes to the plan must be submitted to the Contracting Officer for review and approval in sufficient time to permit DOE evaluation. The contractor shall review the plan at least annually to ensure that it reflects current conditions and provide notification of this review to the Contracting Officer. If the cost-benefit analysis indicates potential cost savings to the Government for self-performance of the activities described in

subparagraphs (a) and (b) above, or indicates self-performance is in the best interest of the Government for any other reason, the Contractor shall request written approval from the Contracting Officer for self-performance of work in sufficient time to permit DOE evaluation.

- e. Notwithstanding any other provisions of this Clause H.7, the Contractor may request approval from the Contracting Officer to self-perform any work scope related to performance under this contract. Such request must be in writing, and contain a detailed justification as to why self-performance of such work would be in the best interests of the Government.

H.8 ADMINISTRATION OF SUBCONTRACTS

- a. The administration of all subcontracts entered into and/or managed by the Contractor, including responsibility for payment hereunder, shall remain with the Contractor unless assigned at the direction of DOE.
- b. The Government reserves the right to direct the Contractor to assign to the Government or another contractor any subcontract awarded under this Contract.
- c. The Contractor agrees to accept transfer of existing subcontracts as determined necessary by DOE for continuity of operations. The Contractor agrees to accept assignment (or transfer of contract technical monitoring and administration responsibilities) of DOE prime contracts. The Contractor shall attempt to negotiate changes to the assigned subcontracts incorporating mandatory flow-down provisions at no cost. If the subcontractor refuses to accept the changes or requests price adjustments, the Contractor will notify the Contracting Officer in writing.

H.9 INCREMENTALLY FUNDED SUBCONTRACTS

The Contracting Officer's consent is required prior to the Contractor incrementally funding any fixed price subcontract. The Contractor's rationale for incremental funding and administrative controls shall be submitted with each request. The Contractor shall notify the DOE Contracting Officer in writing whenever the costs incurred under any incrementally funded subcontract will exceed eighty percent (80%) of the incrementally funded amount obligated to the subcontract by the Contractor. The Contractor shall provide with the notification a plan for continuation or completion of work under the subcontract.

H.10 SUBCONTRACTORS

- a. The Contractor shall ensure that any required prior notice and description of the subcontract is given to the Contracting Officer, and that any required consent is received. Except as may be expressly set forth therein, any consent by the Contracting Officer to the placement of subcontracts shall not be construed to constitute approval of the subcontractor or any subcontract terms and conditions, determination of the allowability of any cost, revision of this contract or any of the respective obligations of the parties thereunder, or creation of any subcontractor privity of contract with the Government.
- b. DOE and the Contractor shall be committed to zero accidents at the FEMP. To that end, the Contractor shall evaluate, commensurate with the work and the associated hazards, all potential site subcontractors (performing work) to ensure that they have an acceptable environment, safety and health (ES&H) program. An acceptable subcontractor ES&H program shall ensure:
 - 1. Compliance with applicable local, state and federal regulatory requirements.
 - 2. That employees are properly trained and equipped for their assigned tasks, and an orientation program has been established for new hires.
 - 3. Policies and procedures are in place to eliminate accidents, injuries/illnesses, and damage to property and equipment.
 - 4. That ES&H records are adequately and properly maintained.
 - 5. Accidents/incidents are investigated promptly and required reports are generated. If the investigation discovers inadequacies in either the work process or the policies and procedures, the appropriate processes are put in place to prevent recurrence and personnel are provided proper training.
 - 6. Hazards are identified and appropriate measures are taken to ensure that personnel and equipment are adequately protected as a result of identified hazards.
 - 7. Employees have the right and responsibility to report unsafe conditions and to interrupt or stop work without fear of reprisal.
 - 8. Regular, frequent ES&H meetings with employees to discuss the work to be performed and the hazards associated with the work.

9. ES&H inspections/audits/assessments are conducted to evaluate the effectiveness of the program.
 10. Average Occupational Safety and Health (OSHA) Recordable and Lost Workday case rates that meet or exceed comparable industry performance.
 11. An established written Hazard Communication Program.
 12. No “Willful Violation” citations from OSHA or other regulator organizations during the previous three (3) years.
 13. If applicable, prior performance of work at the site did not result in harm to human health or the environment or result in citation(s) against identified requirements (previous subcontractor actions may be used to screen out those applicants from future work).
- c. The records of the Contractor evaluation of all potential site subcontractors as stated in H.10.b shall be readily accessible and maintained in a single location for review by DOE.

H.11 OTHER GOVERNMENT CONTRACTORS

The Government may undertake or award other contracts for additional work or services. The Contractor agrees to fully cooperate with such other Contractors and Government employees and carefully fit its own work to such other work as may be directed by the Contracting Officer. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other Contractor or by Government employees. If DOE determines that the Contractor’s activities may interfere with another DOE Contractor, the Contracting Officer shall so notify the Contractor and the Contractor shall comply with any instructions the Contracting Officer may provide.

H.12 CONFIDENTIALITY OF INFORMATION

- a. To the extent that the work under this contract requires that the Contractor be given access to confidential or proprietary business, technical, or financial information belonging to the Government or other companies, the Contractor shall, after receipt thereof, treat such information as confidential, and agrees not to appropriate such information to its own use or to disclose such information to third parties unless specifically authorized by the Contracting Officer in writing. The foregoing obligations, however, shall not apply to:

1. Information which, at the time of receipt by the Contractor, is in the public domain;
 2. Information which is published after receipt thereof by the Contractor or otherwise becomes part of the public domain through no fault of the Contractor;
 3. Information which the Contractor can demonstrate was in its possession at the time of receipt thereof and was not acquired directly or indirectly from the Government or other companies; or
 4. Information which the Contractor can demonstrate was received by it from a third party which did not require the Contractor to hold it in confidence.
- b. The Contractor shall obtain the written agreement, in a form satisfactory to the Contracting Officer, of each employee permitted access, whereby the employee agrees not to discuss, divulge or disclose any such information or data to any person or entity except those persons within the Contractor's organization directly concerned with the performance of the contract.
- c. The Contractor agrees, if requested by the Government, to sign an agreement identical, in all material respects, to the provisions of this clause, with each company supplying information to the Contractor under this contract. From time to time upon request of the Contracting Officer, the Contractor shall supply the Government with reports itemizing information received as confidential or proprietary and setting forth the company or companies from which the Contractor received such information.
- d. The Contractor agrees that upon request by DOE it will execute a DOE-approved agreement with any party whose facilities or proprietary data it is given access to or is furnished, restricting use and disclosure of the data or the information obtained from the facilities. Upon request by DOE, such an agreement shall also be signed by Contractor personnel.
- e. The Contractor agrees that no technical data, information made available to the Contractor by the Government, or information first produced in the performance of this contract or any subcontract, shall be disseminated without the prior written approval of the Contracting Officer. This includes technical papers, press releases, etc.
- f. This clause shall flow down to all subcontracts.

H.13 RESERVED

H.14 WORKFORCE TRANSITION AND MANAGEMENT

In order to: (i) achieve an orderly transition; (ii) be fair to incumbent employees; (iii) maintain a productive and flexible workforce; and (iv) minimize the impacts to other DOE programs, the Contractor will adhere to the following requirements in its human resource management actions. These provisions do not apply to subcontractors performing construction services covered by the Davis Bacon Act (DBA).

a. Employee Transition and Continuity of Employment

1. At the time the Contractor becomes responsible for the work, all current incumbent employees of Fluor Fernald, up to, but not including Level 2 (Department/Project Manager) will be given the right of first refusal for employment with the Contractor and remain in their current positions upon contract take over.
2. Continued employment of employees at Levels 0, 1 & 2 (Department Manager, Vice President and above) is at the discretion of the Contractor.
3. As necessary throughout the term of the contract, the Contractor will have flexibility to reorganize and “rightsize” its workforce as needed to effectively and efficiently perform its mission with the appropriate number of employees and required skill mix. All such workforce restructuring actions must comply with the provisions outlined in subparagraph (i) of this clause. A staffing analysis based upon the detailed manpower planning process referenced in subparagraph (i) must be submitted with the revised baseline required to be submitted to DOE within six (6) months of contract award. Any workforce restructuring actions proposed by the Contractor prior to approval of the revised baseline will require approval by DOE.

b. Pay and Benefits

1. In order to minimize unnecessary disruption to the existing workforce and minimize severance costs, incumbent Contractor employees below Level 2 who transition to the Contractor will retain substantially equivalent pay and benefits during takeover. This includes pension, investment, medical, and other human resource health and welfare programs now in existence at the FEMP. This requirement extends until the revised baseline required to be submitted by the Contractor within six (6) months following contract award is approved by DOE. No changes are to be made to current FEMP retirees’ medical or pension

benefits. Following approval of the revised baseline, any changes to pay and benefits will require DOE approval.

2. The Contractor may establish monetary incentive programs to motivate and recognize employees, improve performance, and retain critical skills required for site closure. Such incentives will be based upon a combination of individual and company performance aligned to achievement of closure mission objectives. The annual cost of such programs will be an allowable cost to the Contractor upon Contracting Officer approval of the overall program as required by DOE orders. The cost to DOE of such incentive recognition and retention programs may be up to four percent (4%) of the annual gross payroll for any given year. The cost for such programs will be evaluated for reasonableness by the Contracting Officer in conjunction with the overall compensation program proposed by the Contractor for reimbursement by DOE.

c. Pensions and Other Employee Benefit Plans

1. The Contractor will, in addition to becoming the sponsoring employer for medical, retiree medical and disability plans, become the sponsoring employer for the FEMP pension and investment plans, and will have responsibility for administering and maintaining their qualified status.
2. The Contractor must submit actuarial certification and employer certification as the sponsoring employer and participating employer in FEMP pension plans in order that such plans be in full compliance with Internal Revenue Code and Employee Retirement Income Security Act (ERISA) requirements including, but not limited to, any applicable non-discrimination testing.
3. In keeping with the closure focus of site activities, the Contractor will maximize efforts which continue and expand upon current FEMP pension plan provisions regarding the concept of lump sum benefits and portability of pension benefits.
4. If this contract:
 - (a) Is terminated,
 - (b) Expires without a follow-on contract, or

- (c) Is replaced with a contract which does not contain a post-contract welfare benefit program for which DOE has a continuing funding obligation, the Contractor will continue as plan sponsor and administrator of existing benefit programs if requested by DOE. These programs include pension and welfare benefit plans for those employees who earned such benefits, including: retirees; disabled employees; and eligible dependents and survivors.
- 5. In accordance with DOE-approved Contractor benefit plans, the Contractor will provide benefit continuation on a funding basis acceptable to DOE.
 - (a) During the final six (6) months of this contract, the Contracting Officer shall provide written direction to the Contractor regarding certain post-employment employee benefits systems, such as pension systems, post-retirement medical insurance, and post-retirement life insurance.
 - (b) The Contracting Officer may direct any of a number of potential means of addressing the continuing responsibilities for these systems. The direction will identify the potential means of addressing such responsibilities that may include, but are not limited to: termination of the plans in accordance with relevant laws and regulations; continuation of the plans on a “pay-as-you-go” basis under a separate contract with the Contractor; or transfer of plan responsibilities to another Contractor or third party. The selection among these options is at the sole discretion of the Contracting Officer. The Contractor will implement the options as directed by the Contracting Officer.
 - (c) To the extent that the Contractor incurs costs under this contract in implementing the Contracting Officer direction, the Contractor’s allowable costs will be reimbursed according to the Allowable Cost and Payment provisions of this contract.
- d. Continuity of Service Credit

All Fluor Fernald employees currently in site-wide benefit plans will maintain their current service credit date for benefit earnings. Employees of Fluor Fernald Teaming Partner companies who are not currently members of site-wide benefit plans will have their service credit determined by the DOE Contracting Officer at the time of transition if they are hired directly by the Contractor.

e. Severance Pay

1. No severance pay is warranted on the date incumbent employees transition to the Contractor, since the transition will occur under substantially equivalent employment conditions.
2. Employees will retain their severance pay benefits earned with Fluor Fernald should they ever be separated involuntarily (except for cause) by the Contractor.
3. Severance pay based on the length of service with Fluor Fernald, including severance pay based on service with the Contractor, will be paid if an individual subsequently is separated involuntarily (except for cause) by the Contractor.
4. Prorated repayment of severance will be required should an individual who accepts severance pay subsequently be employed by the Contractor under substantially equivalent pay and benefits, based upon the length of time between separation and new hire date.

f. Labor Relations (Also refer to the clause entitled “Collective Bargaining Agreements - Protective Services” contained in Section I.)

1. The Contractor agrees to conduct its labor relations program in accordance with DOE’s intent that labor policies and practices reflect the best experience of American industry in aiming to achieve the type of stable labor-management relations essential to the successful accomplishment of DOE’s programs at reasonable cost. Collective bargaining will be left to the orderly processes of negotiation and agreement between Contractor management and certified employee representatives with maximum possible freedom from Government involvement. Contractor management’s trusteeship for working on DOE facilities and programs critical to the national interest includes the duty to adopt practices which are fundamental to the friendly adjustment of disputes, and which experience has shown promote orderly collective bargaining relationships.
2. The Contractor will maintain positive labor-management relations. The Contractor will respect the rights of employees to: self-organize; form, join, or assist labor organizations; bargain collectively through representatives of their own choosing; engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; and have the right to refrain from any or all of such activities.

3. The Contractor will accept transfer of, assume responsibility and accountability for, and recognize the current bargaining agents and their existing collective bargaining agreements which currently cover FEMP activities.
4. The Contractor is considered a successor Contractor as this term is used under the National Labor Relations Act, and agrees to honor successorship language contained in the collective bargaining agreements currently applicable to FEMP activities. Those organizations are as follows:
 - (a) Fernald Atomic Trades and Labor Council, AFL-CIO (FAT&LC).
 - (b) International Guards Union of America (IGUA) Local No. 14.
 - (c) Greater Cincinnati Building and Construction Trades Council, AFL-CIO (GCBCTC).

g. Employee Relations

The Contractor is expected to maintain a positive employee relations environment that will foster high productivity at reasonable cost. The Contractor will implement effective employee concerns resolution programs.

h. Advance Understandings

DOE intends to reach advance understandings with the Contractor on certain human resource policies and systems applicable to work under this contract. This will be accomplished through DOE approval of Contractor policies and procedures covering such personnel costs and related expenses. A Personnel Appendix will not be used. Any deviation from the advance understandings must be approved by the Contracting Officer before such costs incurred will be considered allowable (either direct or indirect) under this contract. These understandings in advance of cost incurrence avoid subsequent disputes in cost categories where reasonableness or allowability may be difficult to determine.

1. Examples of personnel costs and related expenses covered by the advance understandings include, but are not limited to, the following:

Salaries and wages; bonuses and incentive compensation; fringe benefits; premium pay; overtime; holidays; paid time off (vacations, holidays, sick, funeral, military, jury, witness, voting leave); travel, subsistence and relocation; training; insurance; workers compensation; and employee benefit plans such as savings, retirement, separation, life insurance, medical, and disability (short and long term).

2. DOE approval is also required for total annual reimbursed compensation over \$100,000 paid to each individual that charges more than fifty percent (50%) of their time to this contract in a twelve (12) month period. This excludes any bonus or incentive compensation pay which, if paid by the Contractor, will be paid out of the Contractor's profit and not reimbursed under this contract.
 3. Relocation costs incurred with regard to relocating an employee to the work site are allowable in accordance with FAR 31.205-35, Relocation Costs, for this contract. However, the Contractor shall keep the number of employees relocated to a minimum. The Contractor shall submit a plan for advance written approval from the Contracting Officer regarding the temporary and permanent relocation of all employees to the local area charging the cost, or any portion thereof, to this Contract. Unless otherwise agreed, exit relocation costs are not allowable.
- i. Workforce Restructuring (Also refer to the clauses entitled "Displaced Employee Hiring Preference" and "Workforce Restructuring Under Section 3161 of the National Defense Authorization Act for Fiscal Year 1993" contained in Section I.)
1. The Contractor will comply with the provisions of the Ohio Field Office Workforce Restructuring Plan for the Fernald and Mound Sites, "An End in Sight", dated July 1997, as well as any site-specific plans developed by DOE for the FEMP. The Contractor will use its best efforts to accomplish workforce restructuring or displacement so as to mitigate social and economic impacts on the local community.
 2. The Contractor will continue the detailed manpower planning process currently in place at the FEMP which aligns staffing levels and required skill mix with project work. The process identifies job classifications and staffing levels over time, integrated with the site project baseline. The Contractor will share this information periodically with its employees to encourage those in classifications scheduled for reduction to take advantage of the many programs offered through the site Career Development Center (CDC). These programs provide an opportunity for employees to transition into other site job classifications which are increasing, or to better position them to leave the site for other employment opportunities. This Voluntary Separation Program (VSP) is an integral element of the site's process to utilize managed attrition as a primary workforce restructuring tool.

H.15 CONTRACTOR EMPLOYEES

In carrying out the work under this contract, the Contractor shall be responsible for the employment of all professional, technical, skilled and unskilled personnel engaged and to be engaged by the Contractor in the work hereunder, and for the training of personnel. Persons employed by the Contractor shall be and remain employees of the Contractor, and shall not be deemed employees of the Department of Energy or the Government. Nothing herein shall require the establishment of any employer-employee relationship between the Contractor and consultants or others whose services are utilized by the Contractor for work hereunder. Allowability or unallowability of costs for Contractor employees performing work under this contract are defined in FAR Part 31.

H.16 DEPARTMENT OF LABOR WAGE DETERMINATION

In the performance of this contract the Contractor and/or subcontractors shall comply with the requirements of U.S. Department of Labor Wage Determination Numbers 94-2413, dated June 1, 1999, and 99-428, dated November 2, 1999, if the contract or subcontracts are covered by the Service Contract Act. These Wage Determinations are attached to this contract (see Section J). Revised wage determinations shall be required from the Department of Labor and incorporated into this contract at least once every two (2) years but not more often than yearly. The Contractor and/or subcontractors shall comply with the revised wage determinations for Service Contract Act covered employees.

H.17 TRAVEL RESTRICTIONS

- a. For Contractor travel expenses incurred on or after December 1, 2000, a ceiling limitation of TBD shall apply to all reimbursements made for Contractor travel expenses under this contract. Expended funds which exceed the established ceiling will be unallowable unless otherwise authorized by the Contracting Officer.
- b. Notwithstanding any other provisions of the contract, the Contractor further agrees that none of the funds obligated under the contract may be used to reimburse employee travel costs incurred, which exceed the rates and amounts that apply to Federal employees under Subchapter I of Chapter 57 of Title 5, United States Code. To the extent that this contract provides elsewhere for the reimbursement of employee travel costs which exceed the rates and amounts that apply to Federal employees under Subchapter 1 of Chapter 57 of Title 5, United States Code, the preceding limitation on reimbursement of employee travel costs applies to costs incurred on this contract. Costs which exceed these rates and amounts will be unallowable. This restriction is in addition to those prescribed elsewhere in statute or regulation.

- c. Costs incurred for lodging, meals, and incidental expenses are considered reasonable and allowable to the extent that they do not exceed the maximum per diem rates in effect at the time of travel as set forth in:
 - 1. Federal Travel Regulations (FTR) for travel within the 48 states:
 - 2. Joint Travel Regulations (JTR) for travel in Alaska, Hawaii, the Commonwealth of Puerto Rico, and territories and possessions of the United States; or
 - 3. Standardized Regulations (SR) for travel allowances in foreign areas.
- d. Subparagraph (c) does not incorporate the regulations cited above in their entirety. Only the coverages in the referenced regulations addressing the maximum per diem rates, the definitions of lodging, meals, and incidental expenses, and special or unusual situations are applicable to contractor travel.
- e. Airfare costs in excess of the lowest customary standard, coach, or equivalent airfare offered during normal business hours are unallowable except when such accommodations require circuitous routing, require travel during unreasonable hours, excessively prolong travel, result in increased cost that would offset transportation savings, are not reasonably adequate for the physical or medical needs of the traveler, or are not reasonably available to meet mission requirements. However, in order for airfare costs in excess of the above standard airfare to be allowable, the applicable condition(s) set forth above must be documented and justified.

H.18 BUDGET PLANNING INFORMATION

The Contractor is responsible to provide budget planning information (data) for budget formulation purposes. The baseline is the primary source of this information. Performance requirements for project management reporting and budget formulation and execution require performance metrics for both inputs and outputs that the Contractor must provide. DOE Order 430.1A Life-Cycle Asset Management (LCAM) and the Integrated Planning, Accountability and Budgetary System (IPABS) are the primary sources of the performance metrics. The Contractor shall have a funds control and project management system that is reliable and that is integrated with procurement, payroll, and project management systems.

H.19 PROJECT CONTROL SYSTEMS AND REPORTING REQUIREMENTS

H.19.01 Project Control System Requirements

- a. In the performance of this contract, the Contractor shall establish, maintain and use a project control system meeting the requirements specified in the contract, in the following paragraphs titled “Baseline Development,” “Project Performance,” and “Baseline

Change Management” of this Section H.19, and any other system requirements defined by the Contracting Officer. The Contractor may use a pre-existing project control system if such system satisfactorily addresses the system requirements defined below.

- b. The project control system must also meet the requirements of the following DOE guidance:
 - 1. DOE Order 430.1A, Life-Cycle Asset Management (LCAM), October 14, 1998;
 - 2. Integrated Planning, Accountability, and Budgeting System – Information Systems (IPABS-IS) Data Requirements, December 18, 1998;
 - 3. Integrated Planning, Accountability, and Budgeting System (IPABS) Handbook, February 16, 1999; and
 - 4. HQ Baseline Change Control Charter, Office of Environmental Management, Rev. 0, June 23, 1999.

- c. The Contractor shall provide the Contracting Officer with a detailed written description of the proposed project control system for review and approval within thirty (30) days after award of this contract. Cost effective, graded application of controls will be a critical factor in determining acceptability of the proposed system.

The site’s existing Integrated Project Execution System (IPEX) database is to be used and maintained through the transition period. The Contractor shall evaluate the usefulness and cost effectiveness of the system and it’s relationship to the other site information systems during that time. The evaluation shall also identify any enhancements or modifications that are necessary to bring the existing system into compliance with the requirements of the contract. The Contractor shall provide for the DOE Contracting Officer’s approval either a written acceptance of the IPEX database system or a written proposal to use another system including why an alternative system would be in the best interest of the Government, within thirty (30) days of the end of the transition period. If after award, DOE does not agree with the merits of switching to a new system, the IPEX system shall be maintained.

- d. The DOE Contracting Officer Representative (COR) or designated representatives will conduct a compliance review of the Contractor’s proposed project control system to determine if the description and procedures meet the intent of this contract clause, “H.19, Project Control Systems and Reporting Requirements.”

Upon system approval by the Contracting Officer, the Contractor shall fully implement the project control system. The Contractor shall not make any significant changes to the approved system without the prior written approval of the Contracting Officer. The Contracting Officer may direct additional compliance reviews after contract award to determine whether the Contractor is operating the project control system efficiently and producing accurate planning, budgeting, reporting and change control data.

- e. The Contractor shall provide the Contracting Officer or designated representatives with access to all pertinent records, data, and plans for purposes of initial approval, approval of proposed changes, and the ongoing operation of the project control system.

H.19.02 Baseline Development

- a. Technical Baseline and Work Scope Definition
 - 1. Work Breakdown Structure. The Work Breakdown Structure (WBS) shall provide the basis for all project control system components, including estimating, scheduling, budgeting, performing, managing, and reporting, as required under this contract. The WBS shall: be derived from the Statement of Work (SOW) described in Appendix J, Attachment1; be included within the change control process; be approved by the Contracting Officer; and, conform to any implementation guidance which may be provided by the Contracting Officer. The WBS shall first be broken into one leg for the project work and another for miscellaneous non-project level of effort activities. The project work leg shall then be broken out into the 13 project baseline summaries (PBS) as stated in the Statement of Work (Appendix J, Attachment 1). Below each PBS, the Contractor may breakdown the work as needed. However, after the initial approval of the baseline, the Contracting Officer shall approve any changes to the WBS below the PBS level.
 - 2. Technical Baseline. The approved project technical baseline shall be established and maintained in a manner that ensures it can be used to further define and accomplish work, performance can be objectively measured, and its configuration is controlled and changes managed by formal processes. The cost account is the fundamental account of each specific sub-project at which the Contracting Officer will receive routine status reports, evaluate and measure project performance, and exercise change control authority. Cost accounts will be summarized into the lowest WBS element.

A sub-project is a unique effort within the overall project which has a scheduled beginning, intermediate, and ending date milestones. It consists of (at least) remedial investigations, feasibility studies (or conceptual design), design,

procurement, construction, operation, D&D, or waste management aspects. Each of these could be charge numbers (same as work packages) within the cost account.

b. Roles and Responsibilities

1. Organizational Breakdown Structure. The manager responsible for each cost account within the WBS shall be identified. The functional and technical scope responsibilities, limits of authority, and key interface points for each cost account manager shall also be included.
2. Indirect Costs. Person(s) with responsibility and authority for managing and controlling indirect costs shall be identified at a level consistent with the other cost accounts.
3. Cost Account Manager Responsibilities. A cost account shall be assigned to a manager with responsibility and authority to plan and budget the work, and control the resources and work activities within the approved technical, schedule, and cost baselines. The Cost Account Manager is also responsible to report status to allow a complete project rollup of technical, schedule, and cost performance for current period, cumulative to-date, and at-completion.

c. Cost Estimating

1. Estimating Methodologies. Estimates shall be integrated with the WBS and use estimating methodologies that are consistent with DOE Order 430.1A, “Life-Cycle Asset Management.”
2. Estimate Preparation. Estimates shall be prepared consistent with the established project baseline and can be identified by each cost account, WBS element, or rolled up to cost account, Project Baseline Summary (PBS), or total closure project level. The control system must maintain capability to provide Total Estimated Cost (TEC); Total Project Cost (TPC); Estimates-to-Complete (ETC); and Estimates-at-Completion (EAC).

d. Planning and Scheduling Baseline

1. Planning Constraints. A planning process shall be established and maintained throughout the project life that identifies programmatic, operational, legislative, institutional, and other requirements, constraints, and assumptions that may affect technical, schedule, and cost baselines. Potential impacts must be identified and considered in managing baselines through contingency planning and management.

2. Project Risk Management. The Risk Management Plan shall be developed that identifies the various internal and external risks to achieving the project baseline. The Risk Management Plan will analyze possible alternatives to mitigate impacts, select and define specific alternatives including cost and implementation schedules for each alternative, and provide for routine reporting and updating of the Plan at least quarterly.
3. Schedule Development. Schedules shall be developed that integrate with the WBS and cost accounts and represent all project work scope regardless of funding source. Certain non-project level of effort work scope may be excluded. Each cost account will have assigned duration representing work scope accomplishment. Activity logic links shall depict all work scope constraints and decision points and shall be integrated into a total project network schedule. Work scope critical path network schedules are required for the total project, for each PBS and in all cost accounts which exceed \$5 million in life-cycle cost.
4. Schedule Baseline. The project schedule shall clearly depict critical path activities and milestones from which actual performance for activities and milestones can be compared, and from which performance forecasts can be derived. Activities shall be resource loaded at one level below the cost account or lower to develop time-phased budgets that are integrated with the schedule. Float analysis will be done at the cost account level and summarized at the PBS and total project levels to provide days of float.
5. Levels of Schedules and Milestones.

The level 0 schedule is a summary of the duration of overall FEMP project.
The level 1 schedule is a summary of the duration of each PBS.

The level 2 schedule is for the site critical activities for each PBS and includes the interrelationship between the activities.

The level 3 schedule is for the cost accounts that make up the PBSs.

Milestones shall be identified and maintained in accordance with the associated schedules.

The level 0 milestone is a singular milestone that defines the completion of the project. This milestone is under the baseline change control of EM.

The level 1 milestones are the end points of each PBS and other key major activities that are identified as intermediate milestones for headquarters interest. These milestones are under control of EM.

The level 2 milestones are EPA enforceable agreement milestones that can result in fines and penalties, and milestones on projects deemed appropriate by the DOE-FEMP Director. These milestones are under the baseline change control of the DOE-FEMP Director.

e. Cost

1. Cost Accounts. All work scope for a cost account shall be identified and a budget for that work developed. Budget projections shall be time-phased consistent with the schedule and anticipated resources, and shall be reconcilable with the cost estimate.
2. Total Value of Accounts. All work shall be represented in cost accounts and the sum of the cost account budgets equals the baseline value. The baseline will separately identify the following individual budget elements:
 - (a) Direct budget – developed at the charge number level, or lower, identified at cost account level, a WBS Level, and at the PBS Level.
 - (b) Indirect budget – same as direct budget for indirect accounts.
 - (c) Fee – developed based on adjusted target cost, identified at baseline summary level.
 - (d) Risk budget - developed based on project and program factors that may affect the technical, schedule or cost aspects identified in the Project Risk Management Plan.
3. Managing Cost Accounts. A practical and effective method for controlling and measuring performance of the cost accounts shall be used that is verifiable and consistent with schedule performance management. The Contractor shall exercise specific control and decision authority at the cost account level or lower. Indirect budgets will be included in the cost account management system.

H.19.03 *Project Performance***a. Funds Management**

1. Funding Limits. Project commitment and expenditures shall not exceed funding limits as approved by the Contracting Officer. Funding controls as established in the Contractor's control system shall provide early warning before funding limits are exceeded.
2. Funding Changes. The Contractor shall analyze DOE proposed or directed funding changes for their impact on technical, schedule, and cost elements of the baseline. Baseline changes to adjust for significant funding changes may be proposed consistent with Change Control procedures.
3. Funding Reconciliation (or Annual ETC Analysis). An analysis to reconcile forecasted funding requirements with estimated costs to execute the remaining project work for that fiscal year. The analysis shall be maintained on a monthly basis by cost account. Analysis of the variance between currently authorized funds and estimated costs to complete shall be used by the Contractor to make adjustments to budgets or release contingency funds to Cost Account Managers as appropriate.

b. Accounting

1. Recording Costs. All actual direct costs incurred for resources applied in the performance of work shall be recorded on a timely basis each month. Cost assignments shall be made in accordance with an established and auditable system that conforms to Generally Accepted Accounting Principles. Actual costs incurred must be recorded in the same accounting period that performance is measured and recorded. Any indirect costs shall also be collected and appropriately allocated to the project.
2. Collecting Costs. Costs shall be collected at a charge number level or lower and able to be summed through the WBS, cost account, PBS, or by major Contractor functional organization(s). Mischarges on time cards or other administrative or accounting errors shall be corrected in a timely manner. Cost Account Managers shall be provided appropriate reports and information to analyze monthly charges and are held responsible for the validity of charges to their cost account.

c. Work Authorization

1. Work Authorization. Award of this Contract provides authorization for the Contractor to complete the full scope of work in the Contract. Any Contractor requested changes or DOE directed changes shall be addressed through the established Change Control process. Such change control actions do not limit the Contracting Officer or Contracting Officer Representative to provide technical direction regarding work performance such as stop work orders.
2. Contract Funding. The Project Baseline with any approved revisions shall provide the basis for annual authorization of funds to the Contractor for each fiscal year. The Manager of the Ohio Field Office will under normal conditions obligate to the contract 90% of the total annual project funding at the start of the fiscal year and the balance in the 3RD and 4TH Quarters of the fiscal year. Contract funding under this contract shall be subject to the administrative controls as described below:

Current Year Work Plan. Prior to the release of funds for each fiscal year, the DOE will analyze the technical, schedule, and cost baseline for that upcoming fiscal year. By June 30 each year the DOE will provide an estimate of any budget restrictions or specific technical or schedule guidance for the upcoming fiscal years through the remainder of the project. The Contractor shall prepare a project performance forecast for all upcoming fiscal years from the approved total Project Baseline and the DOE guidance. By August each year the Contractor shall submit to the Contracting Officer or designee a comprehensive analysis of total project status, including impacts to technical, schedule, and cost elements of the Project Baseline. The Contractor shall also submit to the Contracting Officer or designee the budget allocations to each PBS for the upcoming fiscal year with a focus on differences to the activities described in the Project Baseline for that specific year. This deliverable is known as the Current Year Work Plan (CYWP), as derived from the life-cycle Project Baseline.

3. Resolving Conflicts. In the event there is a conflict between the requirements of this clause (H.19, Project Control Systems and Reporting Requirements) and the referenced DOE Orders and guidance, the Contractor shall obtain guidance from the DOE Contracting Officer.

4. Responsibility to Achieve Environmental, Safety and Health Compliance. It is the intention of the Government that all work performed by the Contractor be conducted in a manner that protects the environment, the health and safety of employees, and the public. Notwithstanding the other provisions of this clause, the Contractor has, in the event of an emergency, authority to authorize corrective actions as may be necessary to sustain operations in a manner consistent with applicable environmental, safety and health statutes, regulations, and procedures. The Contracting Officer shall be notified in writing within 24 hours of any Contractor action taken pursuant to this provision.

d. Performance Analysis

1. Project Performance. Differences between planned and actual performance shall be analyzed and reviewed monthly against the total project baseline and the Target Cost and Target Schedule for the current fiscal year portion of the total project. Performance analysis techniques shall be commercially accepted and documented, and shall utilize earned-value methods at the cost account or lower levels of the WBS and shall be reported to DOE at the PBS level. Performance Metrics (i.e. quantities) are preferred for measurement of all technical work scope. For variances between planned and actual that exceed thresholds established by the Contracting Officer, the analysis shall describe the causes for variance, impact on other cost accounts, and corrective action required.
2. Project Risk Management. The risk from project and program factors that may affect the technical, schedule, or cost aspects shall be included in the development of the project baseline. Changes in the nature of these risks due to evolving social, political, organizational, environmental or other factors shall be analyzed quarterly, and resulting impacts to the project baseline evaluated. Risk plans shall be adjusted and risk management actions taken as appropriate, including performance improvements, reallocation of budgets to cost accounts, or baseline change proposals submitted if thresholds are exceeded.
3. Estimate at Completion. The Estimate at Completion (EAC) for the *total project* shall be reviewed and evaluated quarterly for consistency with observed trends in performance, emerging or resolved issues, and changes in the assessment of project risk. Additionally, the EAC for the *current fiscal year* shall be reviewed and evaluated monthly for consistency with observed trends in performance, emerging or resolved issues, and changes in the assessment of project risk.

e. Reporting

1. Periodic Plans and Reports. The Contractor shall submit periodic plans and reports in such form and substance as required by the Contracting Officer. These periodic plans and reports shall address general management, schedule/labor/cost, performance measurement, financial incentives, and other technical information relating to performance under the Contract. Section J, Attachment 9 (FEMP Project Control/Management Reporting Requirements Checklist) provides specific information regarding the required plans and reports, frequency, due dates, reporting levels, distribution, and thresholds which apply. Where specific forms are required for individual plans and reports, the Contracting Officer shall provide such forms to the Contractor.
2. Quarterly Critical Analysis (QCA). Once each quarter the Contractor shall prepare and submit a comprehensive report which critically analyzes the overall status of the closure project as well as many key metrics. This report shall include overall narrative summaries, analysis of schedule trends and projects float, critical path performance, analysis of critical manpower skills of other resources, budget and funding figures, and project risk updates. Each QCA will be signed by the senior executive for the Contractor to revalidate the Contractor's commitment and accountability for the project performance.
3. Report Consistency. Plans and reports shall be prepared in such a manner as to provide for consistency with the contract Statement of Work, the project baseline, the approved Work Breakdown Structure, and correlation of data among the various plans and reports. The reporting system established and maintained by the Contractor pursuant to this clause shall recognize changes in work effort directed by the Contracting Officer. The Contractor's reporting system shall be able to provide for the following at the PBS level:
 - (a) Timely incorporation of contractual changes affecting estimated cost and schedule;
 - (b) Reconciliation of estimated costs for those elements of the WBS or discrete cost accounts with current performance measurement budgets in terms of changes to the authorized work and internal replanning;
 - (c) Changes to records pertaining to work performed that will change previously reported costs for correction of errors and routine accounting adjustments;

- (d) Revisions to the contract's estimated costs for Government-directed changes to the contractual effort.
- 4. Full Access. The Contractor shall provide the Contracting Officer, or designated authorized representatives, access to any and all information and documents comprising the Contractor's project control and reporting system. Generally, access will not be requested more than one level below the level chosen by the DOE for control and approval authority (cost account), except during compliance reviews.
- 5. Flow-Down of Reporting. The Contractor shall include *graded* reporting requirements in all subcontracts adequate to fairly evaluate performance and support the Contractor reporting requirements by this clause, H.19, "Project Control Systems and Reporting Requirements." For cost-reimbursement type contracts which exceed \$5 million in life-cycle cost the full reporting requirements of H.19, "Project Control Systems and Reporting Requirements" shall be required.

H.19.04 Baseline Change Management

- a. Baseline Changes. The baseline (which shall be defined for all purposes notwithstanding any other language in this contract as the Fernald Environmental Management Project Baseline) is the source document for all project control and baseline change management. The processes for managing and administering changes to all elements of the baseline shall be timely, formal, and documented. Baseline changes shall be proposed when:
 - 1. Necessitated by significant project delays, events or other impacts; or
 - 2. The parties have negotiated an equitable adjustment in accordance with the Section I clause entitled, "Changes – Cost-Reimbursement" or other clauses of this contract.
- b. Baseline Thresholds. The present system for change control is documented in the DOE-FEMP procedure 5201 Rev. G, Dated March 15, 1999. As follows:

Contracting Officer approval is required for all new scope and/or schedule changes independent of cost or schedule threshold level.

DOE-Headquarters, Level 0 (EM): New or changes to scope of \$50 million and higher and/or greater than 180 calendar day schedule change for any Level 0 milestone.

DOE-Headquarters, Level 1 (EM): New or changes to scope of greater than or equal to \$25 million to less than \$50 million and/or 90 up to 180 calendar day schedule change for Level 0 milestones, or greater than 180 calendar days for Level 1 milestones.

DOE-FEMP Director, Level 2: New or changes to the scope of greater than or equal to \$1 million to less than \$25 million, or 60 up to 89 calendar day schedule change for Level 0 milestone, and Level 1 milestones or greater than 60 calendar days for Level 2 milestones.

DOE-FEMP Associate Director for EM, Level 3: New or changes to the scope of greater than or equal to \$100 thousand to less than \$1 million or 0 to 60 calendar day schedule change for Level 0 milestones and Level 1 milestones, and 30 up to 60 calendar days for Level 2 milestones. A DOE Level 3 Change Control Board review shall be conducted for all Key Decisions (Fernald Implementing Procedure (FIP) 5201 defines Key Decisions).

DOE-FEMP EM Team Leader, Level 4: New scope \$0 to \$100 thousand or changes to scope of greater than or equal to \$50 thousand to less than \$100 thousand. Also, any movement of scope, schedule or budget between cost accounts within a PBS.

Contractor, Level 5: Changes to the scope of \$0 to \$50 thousand. This is under control of the operating Contractor.

- c. Spending at Variance. In some circumstances the Contractor may exceed authorized budget levels for a PBS when a baseline change is not warranted, such as for cost overruns. The current year Estimate to Complete (ETC) Analysis shall track, and manage changes in funding at each PBS level.
- d. Change Control Processing. Change proposals shall be initiated and processed in a timely fashion consistent with the requirements of this contract. Specific change control time frames for consideration and approval will be established by the Contracting Officer. Each change control threshold level shall accommodate emergency changes. Retroactive changes that affect schedule and cost performance data are not allowed except to correct administrative errors. A record of all approved changes, at any level, shall be maintained through the life of the project. Change control records shall maintain a clear distinction between approved changes in funding and baseline changes. Ownership of Change Control Board records and Project Management records resides with DOE.

H.20 SYSTEM OF ACCOUNTING

The Contractor's accounting practices shall conform to Generally Accepted Accounting Principles. The practices must produce equitable results, be consistently applied, be conducive to accurate costing of the contract work, and produce reports required by the DOE.

The Offeror must commit to an on-site automated accounting system that has the capabilities to record the required financial transactions including structure, encumbrances, control and report costs by the DOE's reporting structure (appropriation, budget and reporting number, activity data sheets, project number), produce auditable records, and subsequently transmit in acceptable mode, the periodic detailed accounting information to DOE's primary accounting system and the site management information system.

H.21 QUALITY ASSURANCE PROGRAM

The Contractor shall establish and maintain a formal Quality Assurance Program acceptable to the DOE which satisfies the Quality Assurance Requirements contained in the Standard/Requirement Information Document (S/RID) appended to this contract (Section J, Attachment 2). The Contractor shall also meet the requirements of the Sitewide CERCLA Quality Assurance Project Plan (SCQ). Any subcontracts issued in support of this Contract shall require subcontractors to comply with the above requirements.

H.22 INTERNAL AUDIT

The Contractor agrees to conduct an internal audit and examination program satisfactory to DOE of the records, operations, expenses, and transactions with respect to costs claimed to be allowable and allocable under this contract annually, and at such other times as may be mutually agreed upon. The results of such audit including the working papers, shall be submitted or made available to the Contracting Officer. This clause does not supercede the Government's right to audit.

H.23 PRICE ANDERSON AMENDMENTS ACT NONCOMPLIANCE

The Contractor shall establish an internal Price Anderson Amendments Act (PAAA) noncompliance identification, tracking and corrective action system and shall provide access to and fully support DOE reviews of the system. The Contractor shall also implement a Price Anderson Amendments Act reporting process which meets applicable DOE standards. The Contractor shall be accountable for ensuring that subcontractors adhere to the PAAA requirements.

H.24 DEFENSE NUCLEAR FACILITIES SAFETY BOARD

The Contractor shall conduct activities in accordance with those DOE commitments to the Defense Nuclear Facilities Safety Board (DNFSB) which are contained in implementation plans and other DOE correspondence to the DNFSB, as provided to the Contractor by the Contracting Officer. The Contractor shall support preparation of DOE responses to DNFSB issues and recommendations which affect or can affect contract work. Based on Contracting Officer direction, the Contractor shall fully cooperate with the DNFSB and provide access to such work areas, personnel, and information as necessary. The Contractor shall maintain a document process consistent with DOE M 140.1-A,

“Interface with the Defense Nuclear Facilities Board,” dated January 26, 1999. The Contractor shall be accountable for ensuring that subcontractors adhere to these requirements.

H.25 LITIGATION MANAGEMENT PLAN

The Contractor shall prepare a Management of Litigation Plan that shall be submitted to the Contracting Officer for approval within **ninety (90)** days following contract award. The purpose of the Plan will be to control the cost of litigation and implement the DOE policy favoring the use of Alternative Dispute Resolution (ADR) techniques where appropriate and beneficial to the Government. The Litigation Management Plan should, at a minimum, follow the procedures and cost guidelines in the policy statement published in the Federal Register on April 3, 1996, (61 FR 147.63). The Plan should also cover legal costs not connected with litigation. The Plan will be revised from time to time to conform to litigation management and ADR policies established by DOE.

H.26 COSTS ASSOCIATED WITH WHISTLEBLOWER ACTIONS

a. Definitions:

1. “Adverse determination” means:
 - (i) A recommended decision under 29 CFR part 24 by an administrative law judge that the Contractor has violated the employee protection provisions of the statutes for which the Secretary of Labor has been assigned responsibility;
 - (ii) An initial agency decision under 10 CFR 708.10 that the Contractor has engaged in conduct prohibited by 10 CFR 708.5; or
 - (iii) A decision against the Contractor by the Secretary under 41 U.S.C. 265(c)(1).

Note: in contracts with a non-standard paragraph (h) in the Insurance–Litigation and Claims clause, add the following subparagraph (iv):

- (iv) A judgement or other determination of liability against the Contractor and in favor of the employee in an action in a judicial forum.
- 2. “Costs” include any costs or expenses relating to an employee action, as defined below, including but not limited to back pay, damages or other award in the form of relief to the employee; administrative and clerical expenses; the cost of legal services, including litigation costs, whether provided by the Contractor or procured from outside sources; the costs of services of accountants, consultants or other experts retained by the Contractor; all elements of related compensation, costs and expenses of employees, officers and directors; and any similar costs incurred after the commencement of the employee action.
- 3. “Employee action” means an action brought by an employee of the Contractor under 29 CFR part 24, 10 CFR part 708, or 41 U.S.C. 265, or an action filed in federal or state court for redress of discrimination or discriminatory action by a Contractor based on activities that would be actionable under 29 CFR part 24, 10 CFR part 708, or 41 U.S.C. 265.
- 4. “Litigation costs” include attorney, consultant, and expert witness fees, associated with the defense of an employee action, but exclude the costs of implementing a settlement, judgment, or Secretarial Order.
- b. Segregation of costs. All litigation costs incurred in the investigation and defense of an employee action under this clause shall be differentiated and accounted for by the Contractor so as to be separately identifiable. If the Contracting Officer provisionally disallows such costs, then the Contractor may not use funds advanced by DOE under the contract to finance the litigation.
- c. Allowability of litigation and other costs.
 - (a) Litigation costs, including the use of alternative dispute resolution, and settlement costs incurred in connection with an employee action under this clause are allowable if the employee action is resolved prior to an adverse determination, provided such costs are otherwise allowable under the clauses entitled “Insurance–Litigation and Claims,” “Cost Prohibitions Related to Legal and Other Proceedings,” and other relevant provisions of the contract.

2. In actions in which an adverse determination is issued, litigation, settlement and judgment costs, as well as the cost of complying with any Secretarial Order, are not allowable, unless:
 - (i) the Contractor prevails in a proceeding subsequent to the adverse determination at which a final decision is rendered in the action; or
 - (ii) the Contracting Officer has, on the basis that it is in the best interest of the Government, approved the Contractor's request to proceed with defense of an action rather than entering into a settlement with the employee or accepting an adverse determination or other interim decision prior to a final decision.
 3. Subsequent to an adverse determination, litigation costs, as well as costs associated with any interim relief granted, may not be paid from contract funds; provided, however, that the Contracting Officer may, in appropriate circumstances, provide for conditional payment from contract funds upon provision of adequate security, or other adequate assurance, and agreements by the Contractor to repay all litigation costs, plus interest, if they are subsequently determined to be unallowable.
 4. Litigation costs incurred to defend an appeal by the employee from an interim or final decision in the Contractor's favor are allowable provided they are otherwise allowable under the clauses entitled "Insurance—Litigation and Claims," "Cost Prohibitions Related to Legal and Other Proceedings," and other relevant provisions of the contract.
- d. The provisions of this clause shall not apply to the defense of suits by employees or ex-employees of the Contractor under Section 2 of the Major Fraud Act of 1988 as amended. (See the clause entitled "Cost Prohibitions Related to Legal and Other Proceedings.")

H.27 PERMITS, APPLICATIONS AND LICENSES

- a. Except as otherwise directed by the Contracting Officer, on behalf of the DOE the Contractor shall procure and execute all necessary permits or licenses and abide by all applicable laws, regulations, and ordinances of the United States and of the state, territory, and political subdivision in which the work under this contract is performed.

- b. In recognition of the Contractor's responsibility to operate in compliance with all applicable environmental requirements, the Contractor agrees to sign environmental permits and applications as "operator" if deemed appropriate by DOE and the cognizant regulatory agency. To clarify the resulting obligations under the contract, the parties agree to the following:
 - 1. The Contractor is responsible for obtaining all necessary environmental permits, and for signing permit applications if deemed appropriate by DOE. The Contractor shall accept assignment of permits currently held by DOE and its existing operating Contractor.
 - 2. DOE agrees that if bonds, insurance, or administrative fees are required as a condition for such permits, such costs shall be allowable. In the event that such costs are determined by DOE to be excessive or unreasonable, DOE shall provide the regulatory agency with an acceptable form of financial responsibility. Under no circumstances shall the Contractor or its parent be required to provide any corporate resources or corporate guarantees to satisfy such regulatory requirements.
 - 3. The Contractor shall submit all reports required by permits directly to DOE unless otherwise directed by the Contracting Officer.

H.28 INSURANCE REQUIREMENTS

- a. The Contractor shall provide and maintain the following kinds and minimum amounts of required insurance during the performance of this contract:
 - 1. Workers' Compensation and Employer's Liability Insurance
 - (a) The amount required by the State of Ohio under applicable Workers' Compensation and occupational disease status, and
 - (b) Employer's liability insurance in the amount of \$100,000.00.
 - 2. General Liability Insurance

Bodily liability coverage written on the comprehensive form of policy of at least \$500,000.00 per occurrence.

3. Automobile Liability Insurance

Coverage shall be in the comprehensive form of policy. It shall provide for bodily injury and property damage liability covering the operation of all automobiles used in connection with performing the contract. Policies covering automobiles operated in the United States shall provide coverage of at least \$200,000.00 per person and \$500,000.00 per occurrence for bodily injury and \$20,000.00 per occurrence for property damage.

- b. The amount of liability coverage on other policies shall be commensurate with any legal requirements of the locality and sufficient to meet normal and customary claims. All other policy coverages require prior written approval by the Contracting Officer.
- c. The Contractor will be responsible for increasing the above minimum amounts of insurance to meet any new or additional requirements of any Federal, State or local law, or regulation imposing insurance amounts. The Contractor will send written notification of any new insurance requirements to the Contracting Officer.

H.29 ACQUISITION OF FEDERAL INFORMATION PROCESSING RESOURCES

Acquisition, by lease or purchase, of Federal Information Processing (FIP) Resources (hardware, software, related (FIP) communication equipment, and maintenance agreements) shall be in accordance with the Contractor's Automated Office Support Strategy (AOSS). The AOSS shall be submitted to the Contracting Officer for written approval on an annual basis by October 15 of each year. Prior written approval of the Contracting Officer is required for acquisition of FIP resources not included in the AOSS. In addition, those individual FIP procurement actions which exceed \$100,000.00 unit price or \$250,000.00 extended price shall be submitted for the Contracting Officer's written approval. The Contractor's request for approval shall be in the form of an individual acquisition plan which is acceptable to the Contracting Officer's Representative in terms of form, format, and level of detail.

H.30 MATERIAL SAFETY DATA SHEET AVAILABILITY

The Contractor shall obtain, review and maintain a Material Safety Data Sheet (MSDS) in a readily accessible manner for each hazardous material (or mixture containing a hazardous material) ordered, delivered, stored or used. The Contractor agrees to maintain an accurate inventory and history of use of hazardous materials at each use and storage location.

H.31 PRESERVATION OF ANTIQUITIES, WILDLIFE AND LAND AREAS

Federal law provides for the protection of antiquities located on land owned or controlled by the U.S. Government. Antiquities include Indian graves or campsites, relics, and artifacts. The Contractor shall control the movements of its personnel and its subcontractor's personnel at the job site to ensure that

any existing antiquities discovered thereon will not be disturbed, removed, or destroyed by such personnel. It shall be the duty of the Contractor to immediately report to DOE the existence of any such antiquities so discovered. The Contractor shall also preserve all vegetation except where such vegetation must be removed for survey or construction purposes. Further, all wildlife shall be protected to the maximum extent practicable.

Except as required by or specifically provided for in other provisions of this contract, the Contractor shall not perform any excavations, earth borrow, preparation of borrow areas, or otherwise disturb the surface soils within the job site without the prior approval of DOE or its designee.

H.32 (LOCAL CLAUSE H.1.1) LOADING, BLOCKING, AND BRACING OF FREIGHT CAR SHIPMENTS

- a. Any media to be included in any carload shipment by rail shall be loaded, blocked, and braced by the Contractor in accordance with the standards published by the Association of American Railroads and effective at the time of shipment.
- b. Shipments for which the Association of American Railroads has published no such standards, shall be loaded, blocked, and braced in accordance with standards established by the shipper as evidenced by written acceptance of an authorized representative of the carrier.
- c. The Contractor shall be liable for payment of any damage caused by the failure to load, block, and brace in accordance with acceptable standards set forth herein.
- d. A copy of the appropriate pamphlet of the Association of American Railroads may be obtained from that Association.

H.33 LOBBYING RESTRICTION

The Contractor agrees that none of the funds obligated on this award shall be expended, directly or indirectly, to influence Congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

H.34 NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS—SENSE OF CONGRESS

It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this award should be American-made.

H.35 PROHIBITION OF CONTRACTS WITH PERSONS FALSELY LABELING PRODUCTS AS MADE IN AMERICA

Pursuant to FAR 9.405(a), awards shall not be made to entities that are included on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs. If DOE, or DOE contractor personnel become aware of a possible violation of the prohibition against falsely mislabeling products as made in America, and the entity is not on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs, the matter should be promptly reported through the DOE Contracting Officer to the Office of Management Systems, Office of Procurement and Assistance Management, for potential debarment of the entity pursuant to FAR 9.406-2(a)(4) and 9.406-2(b)(1)(iii).

H.36 PRIVACY ACT SYSTEM OF RECORDS

The Contractor shall be responsible for the design, development, or operation of the following system of records which are subject to the Privacy Act of 1974:

Personnel Records of Former Contractor Employees

Firearms Qualification Records

Personnel Medical Records - DOE and Contractor Employees

Personnel Radiation Exposure Records

Occupational and Industrial Accident Records

Special Access Authorization for Categories of Classified Information

Security Education and/or Infraction Reports

Employees and Visitor Access Control Records

Alien Visits and Participation

The above list shall be revised from time to time by mutual agreement between the Contractor and Contracting Officer as may be necessary to keep it current. Such changes need not be formally incorporated before annual fee and scope modifications, but shall have the same effect as if actually listed above, for the purpose of satisfying the listing requirement in the clause entitled "Privacy Act" in Section I.

H.37 WORKPLACE SUBSTANCE ABUSE PROGRAM

- (a) Any contract awarded as a result of this solicitation will be subject to the policies, criteria, and procedures of 10 CFR Part 707, “Workplace Substance Abuse Programs at DOE Sites.”
- (b) By submission of its offer, the Offeror agrees to provide to the Contracting Officer, within thirty (30) days after notification for award, or award of contract, whichever occurs first, pursuant to this solicitation, its written Workplace Substance Abuse Program consistent with the requirements of 10 CFR Part 707.

H.38 CERTIFICATIONS AND OTHER STATEMENTS OF THE OFFEROR

The Representations, Certifications, and Other Statements of the Offeror submitted with the offer for this contract are, by reference, hereby incorporated in and made a part of this contract.

H.39 OVERTIME CONTROL PLAN AND REPORTING

Overtime expenditures will be reported as required by DOE O 350.1, Change 1, which includes an Overtime Control Plan and semiannual Reports on Overtime Use as directed by the Order criteria.

- a. An initial Overtime Control Plan is due within 180 days of award, and then annually, by November 1 of each year. The initial Plan and all subsequent Plans shall be approved by the Contracting Officer. The Plan will always include the requested overtime premium fund for the year. Overtime premium is determined by all overtime cost -- the hourly basis plus the overtime differential cost.
- b. The semiannual Report on Overtime Use will be forwarded to the Contracting Officer by May 1 and November 1 of each year.
- c. Any overtime expenditures in excess of what has been approved by the Contracting Officer will not be reimbursed.

H.40 USE OF RECOVERED MATERIALS

The DOE policy is to acquire items composed of the highest percentage of recovered/recycled materials practicable (consistent with published minimum content standards), without adversely affecting performance requirements; consistent with maintaining a satisfactory level of competition; and consistent with maintaining cost effectiveness, and not having a price premium paid for products containing recovered/recycled materials.

- a. In the performance of this contract, the Contractor shall comply with the requirements of the following issuances:
- (1) Executive Order 13101 of June 3, 1999, entitled “Greening the Government Through Waste Prevention, Recycling and Federal Acquisition,”
 - (2) Section 6002 of the Resource Conservation and Recovery Act (RCRA) of 1976, as amended (42 U. S. C. 6962, Pub. L. 95-580, 90 Stat. 2822),
 - (3) Title 40 of the Code of Federal Regulations, subchapter I, part 247 (Comprehensive Guidelines for the Procurement of Products Containing Recovered Materials) and such other subchapter I parts or Comprehensive Procurement Guidelines as the Environmental Protection Agency may issue from time to time as guidelines for the procurement of products that contain recovered/recycled materials, and
 - (4) “U.S. Department of Energy Affirmative Procurement Program for Products Containing Recovered Materials,” and related guidance documents as they are identified in writing by the Department. (DOE’s Preference Program for Designated Products Containing Recovered Materials (Recommended Recovered Materials Content Ranges) is available at:

<http://twilight.saic.com/ap/RecycledContent.htm>
- All major groups (paper products, construction materials, non-paper office products, vehicular products, transportation products, landscape products, park and recreation products, and miscellaneous products), as well as all subgroups, are included for reporting purposes.
- b. The Contractor shall prepare and submit reports on matters related to the use of environmentally preferable products and services from time to time in accordance with written direction from the Contracting Officer.
- c. In complying with the requirements of paragraph a. of this clause, the Contractor shall coordinate its concerns and seek implementing guidance on Federal and Department policy, plans, and program guidance with the Contracting Officer. Reports required pursuant to paragraph b. of this clause shall be submitted through the Contracting Officer.

H.41 ALLOCATION OF LIABILITY FOR FINES AND PENALTIES TO RESPONSIBLE PARTY

- a. Liability and responsibility for civil fines or penalties arising from or related to violations of environmental, safety, health, or quality requirements shall be borne by the party that caused the violation (Contractor's, subcontractors teaming partners, joint ventures, etc.). This clause resolves liability for fines and penalties, though the cognizant regulatory authority may assess such fine or penalty upon either party or both parties without regard to the allocation of responsibility or liability under this contract. The allocation of liability for such fine or penalty is effective regardless of which party signs permit applications, manifests, reports or other required documents, is a permittee, or is named subject of an enforcement action or assessment of a fine or penalty.
- b. Regardless of which party to this contract is the named subject (Contractor or DOE) of an enforcement action for noncompliance with the environmental, safety, health, or quality requirements by the cognizant regulatory authority, liability for payment of any fine or penalty as a result of Contractor actions or inactions is the responsibility of the Contractor. Cost of fines and penalties resulting from violations of, or failure of the Contractor to comply with Federal, State, local, or foreign laws and regulations, are unallowable.